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Chairman: Mr. Politi ..... (Italy)

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00-68183 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 158: Report of the United Nations Commission on International Trade Law on the work of its thirty-third session (*continued*) (A/55/17)

1. **Mr. Grainger** (United Kingdom) said he hoped that, by the end of 2000, the draft convention on assignment of receivables would be sufficiently advanced by the Working Group on International Contract Practices to enable its final approval at the next session of the United Nations Commission on International Trade Law (UNCITRAL). Although pleased by the adoption of the useful Legislative Guide on Privately Financed Infrastructure Projects, he was sceptical about the desirability or feasibility of preparing model legislative provisions without proof of substantial support from potential user countries; in view of its resource constraints, the Commission should instead focus its efforts on areas having a demonstrable need for action.

2. Turning to the subject of dispute resolution, he said that the United Kingdom would continue to support the activities of the Working Group on Arbitration, in which it had played an active part. While appreciating the argument against amending the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, he believed that a declaration could be a useful means of clarifying how the Convention should be interpreted. The United Kingdom also took a close interest in the work on the enforceability of interim measures of protection, which should not be treated in the same way as awards under the Convention. Notwithstanding that it was undesirable for the court concerned to reopen discussion on the merits, the judge should nevertheless be allowed a measure of discretion. Stressing the need to avoid duplication of effort and waste of resources, he strongly believed that the efforts of the international community in the field of arbitration should focus on the work UNCITRAL, it being the competent authority on matters of global applicability in international trade law.

3. With reference to future activities of the Commission, he urged caution in taking on work such as elaborating a complete model law in the very difficult area of security interests, although it could be valuable to develop model law provisions focusing on specific topics, such as investment securities held by intermediaries. Endorsed by the Group of Western European and Other States as a candidate for membership of the Commission, the United Kingdom looked forward to playing its part in the development of such future work.

4. **Mr. Kuindwa** (Kenya) said that, in the context of his country's efforts to improve its share in international trade, he appreciated the steady growth in the list of UNCITRAL texts. He supported all endeavours towards completion of the draft convention on assignment of receivables in the belief that its adoption would promote the availability of more affordable capital and credit to needy countries, thus facilitating the development of international trade to the equitable benefit of strong and weak economies alike. He favoured the preparation of a commentary on the convention for the benefit of developing countries which lacked the expertise or human resources to consider effectively and use the rules contained therein.

5. He welcomed the completion of the impressive UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, which would play an important role in attracting private investment for improving infrastructure in the developing countries, and he agreed that the framework for the implementation of such projects should ensure their transparency, fairness and long-term sustainability with a view to enabling countries to reap the benefits. He also supported the decision to seek views from international organizations and States concerning the desirability and the feasibility of preparing a model law or model legislative provisions in the area of privately financed infrastructure projects.

6. Agreeing that the Working Group on Electronic Commerce should complete its work on the draft uniform rules on electronic signatures at its thirty-seventh session, he called on the Group to renew its commitment to building consensus as to their scope and content with a view to achieving the widest possible reception within the international community. He emphasized the importance of developing sound infrastructure in all countries in order to allow international trade to flourish within the parameters of electronic commerce. In that connection, he welcomed the proposal to undertake studies on the three topics of electronic contracting, dispute settlement and dematerialization of documents of title, which would improve international trade norms and permit effective business.

7. He hoped that consideration would be given to the possibility of his region hosting one of the valuable seminars and briefing missions held in the field of training and technical assistance, which were vital to clarifying the features of UNCITRAL texts. He sincerely thanked those Governments and international organizations which, in addition to providing such training and assistance to developing countries, had also assisted their travel to attend the meetings of the Commission. Lastly, he emphasized the need for the Legal Counsel to increase his efforts to impress upon the Secretary-General the importance of substantially increasing the human and financial resources available to the secretariat of the Commission in order to enable it to discharge its mandate with ease.

8. **Mr. Apata** (Nigeria) hoped that work on the remaining articles of the draft convention on assignment of receivables, which should be emphasized as a legal text aimed at increasing the availability of lower-cost credit, would be completed in timely fashion in order to facilitate its adoption at the fifty-sixth session of the General Assembly. He welcomed the adoption of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, which emphasized the positive elements already present in Nigeria's favourable foreign investment regime and which would assist developing countries to prepare or modernize their domestic legislation. Noting that private investment in infrastructure projects enabled the public sector to reallocate to other social needs the resources thus saved, he said that Nigeria would take steps to fine-tune its own domestic legislation in that area.

9. Expressing regret that requests for further seminars and briefing missions in connection with training and technical assistance had been denied owing to lack of resources, he supported the recommendation to request the Secretary-General to increase substantially both the human and financial resources available to the UNCITRAL secretariat and reiterated Nigeria's continued support as a member of the Commission for its future work.

10. **Mr. Al-Aradi** (Bahrain) said that international cooperation was essential to eliminating the legal obstacles to the equal and fair conduct of international trade without discrimination in the joint interests of all States, particularly the developing countries. Having noted that the participation of the private sector in financing infrastructure projects was key to making reductions in public spending, he remarked in a more general vein on the unnecessary duplication of efforts owing to the lack of coordination between UNCITRAL and other United Nations bodies working in the same field.

11. Bahrain had long played a prominent role as a strategic tax-free financial centre with a stable economy, a highly skilled workforce, a sound infrastructure, an open market and sophisticated communications systems. As such, it was home to a multitude of international and Islamic financial institutions and was also instrumental in the facilitation of international trade in the region through modern technologies such as electronic commerce, in which connection it had hosted numerous seminars and an international conference. Electronic commerce was now in widespread use by government departments, private business and individual consumers. It was also possible to access government information and conduct government business, such as payments, via the Internet. In equally common use in Bahrain was the facility of electronic banking.

12. **Ms. Kalema** (Uganda) expressed satisfaction with the progress achieved during the Commission's thirty-third session. She welcomed the work done on the draft convention on assignment of receivables, and supported the Commission's decision to delete the reference to receivables financing in the title of the instrument. Retaining the reference would have been inconsistent with the scope of the instrument, which extended beyond the financing of transactions. The Convention should be limited to contractual receivables. To include non-contractual receivables would unnecessarily delay completion of the draft, which she hoped would be completed in 2001.

13. She welcomed the adoption of the Legislative Guide on Privately Financed Infrastructure Projects. The developing world, which was endeavouring to attract private investment, attached great importance to the Guide. She hoped the secretariat would disseminate it as widely as possible.

14. Remarkable progress had been made in drafting the uniform rules on electronic signatures, a complex exercise which called for a common understanding of the legal issues involved. The Working Group had been urged to complete the draft at the Commission's next session, but she hoped it would nevertheless maintain its careful and thorough consideration of the rules.

15. She noted with interest the priority items suggested for possible future work on international commercial arbitration. With regard to insolvency law and transport law, she agreed with the Commission's recommendation that to avoid duplication, serious consideration should be given to the work being done by other bodies in those areas.

16. She commended the work of the secretariat on compiling the collection of case law on UNCITRAL texts (CLOUT), which was a useful tool for promoting the uniform interpretation and application of the texts.

17. The secretariat stood in need of more funds to expand its training and technical assistance activities. It was unfortunate that a number of requests for training had had to be turned down. Welcome contributions to the seminar programme had been made by Canada, Cyprus, France, Greece, Mexico, Switzerland and the United Kingdom. Those contributions directly benefited developing countries and countries in transition. She was grateful to Singapore for its contribution to the Trust Fund for Granting Travel Assistance to Developing States members of UNCITRAL. She hoped the Secretary-General would also substantially increase the resources available to the secretariat for its work.

18. **Mr. Mirzaee-Yengejeh** (Islamic Republic of Iran) reiterated his country's support for the Commission and its mandate. Over a period of three decades, the Commission had succeeded in developing a body of rules and guidance for commercial relations among nations. In the era of globalization, it was well equipped to play an even greater role, by examining the implications of that phenomenon and working to ensure equitable distribution of its benefits.

19. He was glad to note that during its thirty-third session, the Commission had succeeded in finalizing the Legislative Guide on Privately Financed Infrastructure Projects, containing 70 recommendations to legislatures. The Guide would be a useful tool for policy makers and legislatures in reviewing and updating their existing legislation on the subject. It should be disseminated as widely as possible.

20. He hoped the Working Group on International Contract Practices would be able to finalize the draft convention on assignment of receivables in time for it to be adopted at the Commission's next session. He endorsed the Commission's request to the secretariat to prepare and distribute commentaries to the draft articles. Commentaries would be helpful to legislatures when considering adoption of the future convention, and also to users engaged in its interpretation and application.

21. He appreciated the secretariat's efforts in the field of training and technical assistance, which should certainly continue in future. Training helped to foster understanding of the rules devised by the Commission and facilitated their universal acceptance. He therefore supported the Commission's recommendation in paragraph 442 of its report (A/55/17) that the Secretary-General be asked to increase substantially both the human and the financial resources available to its secretariat.

22. His delegation was concerned at the low level of participation by developing countries in the Commission's activities and working groups. In the era of globalization, their participation was more important than ever, and he urged both the Commission and the General Assembly to pursue their efforts to increase it.

23. **Mr. Bliznikas** (Lithuania) said that his Government attached great importance to the topics discussed during the Commission's thirty-third session, especially the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, the draft convention on assignment of receivables, the draft uniform rules on electronic signatures, and the arbitration rules. He particularly welcomed the adoption of the Legislative Guide. Its recommendations would help domestic legislators and policy makers to establish a national legal framework favourable to private investment in public infrastructure. The recommendations should, however, be tested in practice before the Commission undertook any further work in that area.

24. He hoped the Commission would be able to adopt the draft convention on assignment of receivables at its 2001 session. As for rules of arbitration, which formed an important part of the legal framework of international trade, the Commission had a pivotal role to play in their development, and his delegation fully supported its work in that respect.

25. The process of unifying and harmonizing international trade law should be made more efficient and consistent by coordinating the work of the Commission, on a continuing basis, with that of other international organizations active in the same field. It

was especially important to do so when elaborating the rules on commercial arbitration and insolvency law.

26. His delegation welcomed the Commission's efforts in organizing seminars, symposia and briefing missions in a number of States, thereby promoting wider adoption of its instruments. He requested the secretariat to consider the possibility of organizing in Vilnius, with the full cooperation of his Government, a seminar or briefing for legislators, judges, arbitrators and other users of the UNCITRAL texts from the Baltic States.

27. **Mr. Troyjo** (Brazil) expressed appreciation of the Commission's continuing debate on the legal aspects of electronic commerce. With the advance of new information technologies and the expansion of international trade flows, it was essential to have a body of uniform trade law. In Brazil, the Commission's work had helped to fashion the legislation to facilitate electronic commerce that was soon to be adopted. He urged the Commission to continue its work in creating an atmosphere favourable to electronic transactions, which would enable all concerned to benefit from the vast potential of electronic commerce to generate prosperity. Model laws prepared by the Commission should be drafted as impartially as possible, to reflect the neutral character of technology in its application to trade.

28. He welcomed the conclusion of work on the Legislative Guide on Privately Financed Infrastructure Projects, which would be especially valuable for developing countries as a potential tool for creating business initiatives and attracting private investment. Brazil also attached great importance to the Commission's work in the field of commercial arbitration. With the exponential growth in international transactions, trade disputes would inevitably multiply, and the international community must have a set of guidelines to enable the parties to settle them in a transparent and fair manner. He also welcomed the progress made by the Commission in drafting model legislation in the areas of cross-border insolvency and the carriage of goods by sea.

29. **Mr. Shin Hyun-soo** (Republic of Korea) welcomed the adoption of the Legislative Guide on Privately Financed Infrastructure Projects, which should prove useful to domestic legislators and policy makers in establishing a legal framework favourable to private investment in public infrastructure. He shared the majority view in the Commission that specific legislative guidance, in the form of a model law or model legislative provisions, was both desirable and feasible. In view of the diversity of national legal traditions and administrative practices, however, it would be appropriate to test the Guide in practice before deciding whether to prepare a new instrument.

30. The draft convention on assignment of receivables should be considered for adoption at the Commission's thirty-fourth session. He therefore supported the decision to refer the text to a working group with agreed terms of reference and limited scope.

31. In view of the increasing need for legislation to facilitate electronic commerce, he welcomed the completion of the draft model law on electronic signatures.

32. It was important to bring into effect the conventions and model laws emanating from the work of the Commission. In that light, he welcomed the secretariat's endeavours to organize seminars in various countries to promote awareness and adoption of the Commission's work. His Government was grateful to the secretariat for the decision to hold a seminar in the Republic of Korea in November 2000. Although not a member of the Commission, his country intended to continue as an active participant in its work.

33. **Mr. Carp** (United States of America) commended the Commission on completing its work on the Legislative Guide on Privately Financed Infrastructure Projects, begun several years previously. The Guide could facilitate change and infrastructure development by drawing on the considerable pool of resources available in private sector capital markets. The Commission had thus kept pace with changes which had seen a continuing decline in direct governmental funding and a growth of new partnerships with private capital funding. The Guide had also illustrated the movement away from harmonization between existing legal systems and towards an agreement on standards, which could generate support from capital markets and promote economic improvements. The Commission had agreed to consider further work in the same field by beginning the preparation of a model law or model provisions to implement project finance. His delegation supported

that effort, which should be entrusted to a working group in order to ensure full participation by States.

34. The draft convention on assignment of receivables would offer substantial benefits for trade relationships generally, and in particular for developing and emerging States. There was little or no financing available from capital markets for some of such States, partly because of their older commercial finance laws. The fundamental provisions in the text to ensure their adoption of modern finance laws should therefore be retained if the draft convention was to have its due economic effect. The final meeting of the Working Group on International Contract Practices, to be held in December 2000, would focus on special provisions for, or exclusions of, specialized commercial sectors whose transactions were already regulated or subject to accepted practices which would not work under the draft convention. It was most important to ensure that such sectors were not inappropriately drawn into the scope of the draft convention, unless they sought inclusion.

35. He welcomed the action taken by the Commission, in the context of monitoring the implementation of the 1958 New York Convention, in instructing the Working Group on Arbitration to consider whether practices under the Convention could be harmonized in cases involving the validity of agreements to arbitrate and the use of interim measures of protection in support of arbitration. The decision to draft a new model law on conciliation, with a practical guide, which would go well with the Commission's other legislative texts on alternative dispute resolution, was also welcome.

36. The Commission had endorsed three instruments produced by the International Chamber of Commerce, including Incoterms 2000, the Uniform Rules for Contract Bonds and, most importantly, the Rules on International Standby Practices (ISP98), which his delegation believed should lead States to consider adopting the United Nations Convention on Independent Guarantees and Standby Letters of Credit. ISP98 itself, however, represented a step forward, in that its negotiation by banking associations in many countries was a direct outcome of the Convention and had been designed to harmonize with it. Adoption of the Convention would facilitate cross-border transactions, and he wondered whether other delegations were likely to seek to implement it. He noted that the UNCITRAL Model Law on Cross-Border Insolvency had been adopted by Mexico and was before the United States Congress for adoption. His delegation hoped that other States would follow suit.

37. The growth of electronic commerce offered commercial entities worldwide the opportunity to enter the stream of international trade, but he cautioned that — particularly in a rapidly developing field such as electronic commerce — the Commission's work should not be geared to regulating for regulation's sake nor to developing rules without knowing whether they promoted or hindered trade. His delegation was concerned that the proposed rules for electronic signature and message authentication systems, to be considered by the Commission in 2001, were not technology neutral, might induce overregulation of commercial transactions and had been formulated without full knowledge of their economic effect. It was to be hoped that the Commission would not adopt the same approach for future projects.

38. **Ms. Toomey** (Australia) said that her delegation, which had been involved with the work of the Commission since its inception and continued to participate actively in various working groups, welcomed the completion of the Commission's work on the Legislative Guide on Privately Financed Infrastructure Projects, which would, it was to be hoped, be widely used. The progress made in the preparation of the draft convention on assignment of receivables was also encouraging. It was particularly pleasing that the Working Group on Insolvency Law, in which her delegation participated actively, had been given a further mandate to investigate and develop insolvency regimes.

39. Her delegation welcomed the continuing development of the draft uniform rules on electronic signatures, which would encourage the growth of cross-border electronic commerce. Indeed, her Government had recently enacted legislation reflecting the concepts and provisions of the UNCITRAL Model Law on Electronic Commerce. Her delegation also attached importance to the Commission's continuing work in the areas of training and assistance and to the continued operation of the Case Law on UNCITRAL Texts, which was a valuable tool for international trade research, facilitating access to relevant developments around the world. In view of the importance of harmonizing international trade law and the Commission's achievements in that direction, her

delegation was concerned that the Commission should continue to receive the financial and personnel resources it needed.

40. **Mr. Gomaa** (Egypt) said that his delegation was encouraged by the adoption of the Legislative Guide on Privately Financed Infrastructure Projects, which would help Governments establish the appropriate legislation. It also welcomed the adoption of the first 17 articles of the draft convention on assignment of receivables, which would facilitate financing and access to credit at lower rates. It was to be hoped that the Commission would be able to finalize the text at its next session.

41. The Commission's work on electronic commerce was of particular interest, in view of the growing use of electronic communication. It was, however, an area where unequals met. The rules must therefore be acceptable to all States, regardless of their different legal, social and economic systems. Lastly, he commended the efforts of the Commission secretariat in organizing seminars and promoting awareness of international trade law, particularly through the Case Law on UNCITRAL Texts.

42. **Mr. Zhdanovich** (Belarus) said that at its thirty-third session the Commission had made excellent progress in developing international legal texts, in confirmation of its important role of unifying and harmonizing international trade law and eliminating legal barriers to international trade. He particularly commended the work of the Working Group on International Contract Practices and the adoption of the first 17 articles of the draft convention on assignment of receivables, although much remained to be done. The Working Group should not, however, reopen the discussion on the basic issues that had already been decided. His delegation hoped that the work would be finished in time for the draft convention to be submitted for adoption at the fifty-sixth session of the General Assembly, since it would provide the necessary protection for debtors in the case of an assignment of receivables, as well as extending the availability of capital and credit at more affordable rates, thus facilitating the development of international trade. The Analytical Commentary to the draft Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] (A/CN.9/470) would form the ideal basis for the preparation of the commentary on the draft convention.

43. His delegation welcomed the adoption of the Legislative Guide on Privately Financed Infrastructure Projects, which would be of great use to Governments in legislating on such projects. In that connection, his delegation considered that a model law or model provisions should be developed as an aid to policy in countries lacking the qualified personnel or human resources required for the in-depth analysis of various issues discussed in the legislative guide.

44. The Commission's work on training and technical assistance was of great value, particularly for countries with an economy in transition, which did not always possess the necessary experience in trade and trade law. The work of the Commission secretariat in that field could play a key role in such countries' efforts to achieve economic integration. Indeed, his delegation would request the secretariat to consider the possibility of extending its training programmes for specialists from developing countries and countries in transition and to provide greater technical assistance in developing trade law in such countries. The Case Law on UNCITRAL Texts was also most valuable, giving judges, lawyers and other legal specialists the opportunity to take into account decisions in other countries when reaching their own decisions or conclusions or, indeed, in amending their decisions. It was particularly gratifying that the texts had become available on the Internet.

45. **Mr. Vamos-Goldman** (Canada) endorsed much of what has been said, which confirmed the need to strengthen the Commission. A larger membership and greater participation in the Commission's work would in turn serve to strengthen the hand of organizations dealing with State law. He therefore urged that consideration should be given to expanding the Commission. The secretariat should undertake research on the possible implications.

46. **Mr. Chan** (Chairman of the United Nations Commission on International Trade Law) welcomed the various comments and suggestions, from which the Commission would greatly benefit. He was glad that the Commission's needs had been recognized and hoped that the Fifth Committee would be able to approve the necessary funding. In that context, he called for further support for the Commission's Trust Fund for Symposia, to which the Government of France had just made a most welcome contribution. It represented an important way of disseminating the Commission's work and sensitizing States — particularly developing countries — to its importance.

The meeting rose at 4.45 p.m.

United Nations A/C.6/55/SR.5

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Sixth Committee

Summary record of the 5th meeting
Held at Headquarters, New York, on Wednesday, 11 October 2000, at 10 a.m.

Chairman: Mr. Politi ..... (Italy)

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Agenda item 163: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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00-68332 (E)

The meeting was called to order at 10.10 a.m.

Agenda item 163: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (A/55/33, A/55/295 and Add.1 and A/55/340)

1. **Mr. Mirzaee-Yengejeh** (Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization), introducing the report concerning the Special Committee's session held from 10 to 20 April 2000 in New York (A/55/23), said that the Special Committee had continued its substantive consideration of the various proposals made during its previous session and, in some areas, had clarified certain aspects of the subjects before it. Paragraphs 10 to 13 of the report contained a list of the proposals which had been taken up. The Special Committee had made two recommendations, which were contained in paragraphs 48 and 49, concerning the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.

2. With regard to the Special Committee's working methods, he said that he had met the Chairman of the Committee on Conferences to discuss the question of the under-utilization of conference services by the Special Committee at its previous sessions. At its most recent session, the Special Committee had made a concerted effort to achieve optimal utilization of the resources available to it, as was demonstrated by the figures provided by the Department. It was to be hoped that the Special Committee would continue those efforts and would soon be in a position to take the necessary decisions on the issues raised in paragraphs 162 to 198 of the report.

3. **Mr. Alabrune** (France), speaking on behalf of the European Union, Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Norway, Poland, Romania, Slovakia and Slovenia, said that, on the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, the European Union believed that every effort should be made to reduce the negative effects of sanctions on third States, as was demonstrated by its backing for the measures contained in the various resolutions on the topic and by its practice of providing economic and humanitarian support to affected third States.

4. The proposals of the ad hoc expert group provided a useful basis for the consideration of measures aimed at minimizing the consequences of sanctions for vulnerable groups in the affected State and for the economies of third States. The European Union considered, however, that the Special Committee could not usefully and effectively launch a substantive debate on the various recommendations in the report until it had received the views of the Secretary-General on the suggestions by the experts, particularly with regard to their feasibility in political, financial and administrative terms.

5. With regard to targeted sanctions, which had been mentioned by many delegations at the most recent session of the Special Committee, and without prejudice to the Security Council's margin of discretion, it should be recognized that targeted sanctions could reduce the negative effects of sanctions on the population of the affected State and on third States. In that context, the European Union stressed the importance of the initiative by Germany concerning the improvement of the arms embargo and travel restrictions regime, put forward at an expert meeting held in Bonn in November 1999, the results of which would be presented in December 2000 in Berlin and probably in February 2001 in New York. The European Union was awaiting with interest the conclusions and recommendations of the working group on sanctions established by the Security Council.

6. With regard to the International Court of Justice, the European Union shared the concerns expressed in previous years about the need to provide to the Court, as the principal judicial organ of the United Nations, all the resources it required in order to fulfil its tasks effectively.

7. The European Union welcomed the amendments to the proposal for the establishment of a dispute prevention and early settlement service. The European Union had hoped that, since the proposal had been refocused on the need for States to resort as far as possible to existing mechanisms, particularly within the framework of the United Nations, the Special Committee would respond favourably to the amended document, but unfortunately that had not been the case.

8. The European Union thanked the Secretary-General for his work to reduce the backlog in the

publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, which it considered to be of great importance in relation to the implementation of the Charter of the United Nations and the activities undertaken by the organs of the Organization. The European Union welcomed the establishment of a trust fund for the updating of the *Repertoire*, to which Germany, Portugal and the United Kingdom had already contributed, and urged all States Members to contribute to the fund.

9. The documents which had been considered by the Special Committee in 2000, some of which had been on its agenda for several years, were often worded in excessively vague terms; moreover, they did not always take into account the practice of the Organization in the area in question and, at times failed to respect the balance established by the Charter, especially the respective roles of the Security Council and the General Assembly. As in the 1999, the European Union did not feel that it was necessary to recommend to the General Assembly that it should request the International Court of Justice for an advisory opinion on the question of the lawfulness of the use of force in the absence of express authorization by the Security Council.

10. Improvements needed to be made to enhance the effectiveness and credibility of the Special Committee's work. It was for that reason that in 1999 the European Union had supported the proposals to include in the Special Committee's mandate the reform of its own working methods as a matter of priority. That move must be pursued with boldness and determination so as to enable the Special Committee to exercise fully and effectively the functions assigned to it and to make the best use of the limited resources at its disposal. In that respect, among the many suggestions put forward in the Special Committee in 2000, the suggestion by Japan, which had engendered an interesting debate, was worthy of interest; it was regrettable that the Special Committee had not reached agreement on that document. The debate must be continued, even if certain proposals called in question traditional practices which, with the passage of time, were undermining rather than serving the effectiveness of the Special Committee's work.

11. The list of topics referred to the Committee was growing ever longer and had long since lost any coherence. That was due mainly to the fact that each year the Committee considered topics that had already been considered in other forums. In addition, topics on which the Committee had not reached agreement after several years of consideration were still on its annual agenda, it would therefore be preferable, at the very least, to take up the consideration of those topics every two or three years in order to determine, if need be, whether there had been any changes in the positions of those concerned. There were various measures that could be adopted to improve the Committee's working methods and to prevent its work from becoming hopelessly uninteresting, namely, establishing a mechanism for eliminating topics on which there was no consensus after several years' consideration with no tangible results, establishing a mechanism for setting priorities and seriously considering the possibility of reviewing certain topics every two or three years; organizing informal meetings on some topics so that an item could be considered more rapidly; approving the report of the Special Committee more rapidly, following for example, the procedure used by the Ad Hoc Committee on International Terrorism (the European Union had made that proposal the year before, but regrettably, it had not been followed up). Lastly, the Committee could review new proposals before including them in its agenda. The European Union was of the view that it was difficult for new topics to be included in the Committee's agenda since they would be added to the numerous topics already on it. Nevertheless, such issues were not the responsibility solely of the Committee, but also of the General Assembly, which determined the Committee's mandate.

12. With regard to the length of the Committee's 2001 session, the European Union noted that the 2000 session had been reduced from two weeks to eight days without any harm being caused, and believed that the length should remain the same in 2001, since the Committee was making full use of the conference services at its disposal. The length of the Special Committee's sessions was closely related to its capacity to reform its working methods substantially.

13. **Mr. Mun** Jong Chol (Democratic People's Republic of Korea) said that sanctions against individual countries had serious direct or indirect effects on other countries in the areas of the economy, culture and trade, and that international peace and security could be jeopardized as a result. When consideration was being given to imposing sanctions, their potential impact on the development of the target

State and on the peace and security of the region should be borne in mind. Sanctions which had purely political aims and which were imposed in defiance of their adverse impact tended to diminish the credibility of the Security Council, as had occurred with the sanctions imposed since the end of the cold war. Accordingly, an overall assessment of the sanctions applied by the Security Council was even more important than assistance to third States affected by the application of sanctions. There were many cases in which sanctions served only to satisfy the objectives of certain influential countries; for that reason, in order to prevent abuses, it was necessary to have a legal framework that would define unambiguously the time-frame and scope of sanctions and make it possible to review them with a view to lifting them gradually.

14. The Special Committee should ensure that the United Nations did away with the vestiges of the cold war. It should be noted that the so-called "United Nations Command" — a fiction created illegally by the United States half a century earlier without consulting any United Nations body, which thus lacked authority to deal with political, military or financial issues involving the Organization, although it appeared to be one of its subsidiary organs — continued to exist in the Southern part of Korea. In the light of the positive developments in the Korean Peninsula, the United Nations should consider terminating the "United Nations Command".

15. **Mr. Andjaba** (Namibia), speaking on behalf of the States members of the Southern African Development Community (SADC), said that the imposition of sanctions should be approached with great caution, as their purpose was to modify the behaviour of a State in violation of the Charter of the United Nations and not to punish the helpless people of that State or third States. Sanctions should not undermine the capacity of the target State or of third States to carry out their humanitarian obligations. In addition, when they were applied, the specific situation of the target State should be taken into account.

16. SADC believed that the international community should address the problems of third States affected by the application of sanctions on a more equitable basis. Accordingly, the United Nations should, in accordance with Article 50 of the Charter, establish an appropriate mechanism to assist affected States.

17. In the view of SADC, the working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation", constituted a useful contribution to the debate on sanctions and their adverse humanitarian effects. The questions raised in the paper should be considered by the Special Committee, in the light of the views expressed in other bodies.

18. The members of SADC, pursuant to the principle of the peaceful settlement of disputes laid down in Article 33 of the Charter, had made use of the mechanisms provided for in that Article and encouraged other States to do the same.

19. **Mr. Niehaus** (Costa Rica), referring to the working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation", said that sanctions were a means of collective self-defence of the international community that was recognized in the Charter of the United Nations. Sanctions regimes should be established carefully to ensure that they fulfilled their primary aim, namely, to modify the illegal policies of an individual Government. Accordingly, sanctions should always be of limited duration, and must not be a way of punishing the innocent civilian population. If the target State was to modify its illegal policies, any sanctions regime should be accompanied by an active and ongoing dialogue among the parties. Only in that way could the State become part of the international community.

20. His Government had noted on numerous occasions that certain sanctions regimes which imposed prohibitions on specific individuals sometimes did not meet the requirements of guarantees of due process. Certain sanctions committees performed virtually judicial functions in order to determine whether the relevant sanctions regimes had been violated; for that reason, those committees must develop coherent judicial precedents and must respect the right to a defence of the States accused of violating the sanctions. It would be desirable for all the decisions of those committees to be made public.

21. With regard to the peaceful settlement of disputes, his delegation welcomed the draft resolution submitted by Sierra Leone and the United Kingdom. It was a useful proposal which made it possible to

envisage a specific and positive outcome of the debates on the question in the Special Committee.

22. He welcomed the proposals made by Japan with a view to improving the working methods of the Special Committee. In order to achieve that goal, however, there was a need not only to reiterate the provisions already contained in the rules of procedure of the General Assembly, but to make a further contribution to institutional practice and, to the extent possible, to ensure that the rules which were adopted could be extended to other subsidiary bodies of the General Assembly.

23. **Mr. Guan** Jian (China) said that the revised working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the imposition of sanctions and other coercive measures and their implementation", was aimed at establishing standard criteria for the imposition of sanctions, so that they could achieve their purposes as quickly as possible, while minimizing their negative impact on the humanitarian situation.

24. His delegation agreed with the Special Committee that the document should be considered paragraph by paragraph. It was to be hoped that at its next session, the Committee would continue its consideration of the document, with a view to reaching consensus rapidly.

25. The draft resolution contained in the working paper submitted by Belarus and the Russian Federation at the previous session of the Special Committee with regard to the use of force under Chapter VII of the Charter (A/AC.182/L.104/Rev.1) was of great importance in maintaining and strengthening the international collective security system with the Security Council at its centre. The document should be considered on a priority basis.

26. His delegation agreed with the basic thrust of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" and also agreed that it should be discussed in depth. In that regard, the Sixth Committee and the Special Committee should play a more prominent role in peacekeeping. At the same time, the relevant bodies should coordinate their activities through existing channels or by other means, so that a more comprehensive and objective view of the issues could be obtained.

27. The issue of the implementation of Charter provisions related to assistance to third States affected by sanctions was of great interest to developing countries. The use of sanctions as a means of settling international disputes should be minimized. Moreover, the international community should support the just demands of third States affected by sanctions. His delegation welcomed the conclusions and proposals of the ad hoc expert group, which could serve as a basis for formulating a set of recommendations to evaluate the negative effects on third States of preventive measures or the application of sanctions. The establishment of a fund and a permanent consultative mechanism to assist third States should also be actively explored.

28. His delegation took note of the progress made by the Special Committee on the issue of peaceful settlement of disputes. In that context, he said the revised informal working paper submitted by Sierra Leone and the United Kingdom, which emphasized the use of existing mechanisms, merited further study.

29. With respect to the future of the Trusteeship Council, his delegation believed that the Council should not be abolished, nor should its mandate be changed, despite the fact that it had fulfilled the mandate entrusted to it by the Charter. Any change in the mandate would entail a revision of the Charter of the United Nations and should be dealt with solely in the context of the reform of the Organization.

30. His delegation appreciated the efforts made by the Japanese and other delegations with a view to improving the working methods and enhancing the efficiency of the Special Committee, and would do its utmost to contribute to the achievement of that goal.

31. **Mr. Hetesy** (Hungary) said that the work of the Special Committee, and ultimately its future, depended on the reform of its working methods. Despite the commendable efforts of its Chairman, the Special Committee had completed its session without achieving meaningful progress on any of its agenda items because of deep-rooted divisions and a systemic failure of its work. Hungary therefore supported the efforts to reform the Special Committee and commended the Japanese delegation for taking a leading role in that exercise. It was regrettable that even the debate on reform proposals had suffered the effects of systemic failure. Bold proposals were currently in jeopardy due to a lack of political will or consensus, while the

attempt to establish a lowest common denominator might result in partial measures. Without new foundations, the Special Committee would not only lose its capacity to strengthen the United Nations system, but would also be relegated to mediocrity.

32. Hungary wished to reiterate that assistance to third States affected by sanctions was not simply an issue related to Article 50 of the Charter of the United Nations. Article 50 dealt with the relationship between the Security Council and "third States" and, in that regard, Hungary welcomed the establishment by the Security Council of the working group on sanctions. It was to be hoped that the working group would give Article 50 the attention it deserved. Delegations had highlighted the relationship between peacekeeping operations and sanctions regimes, which preceded, replaced or complemented peacekeeping operations. While the Fifth Committee was trying to eliminate the burden-sharing irregularities of the peacekeeping scale, the Special Committee had failed to act on any of the recommendations of the ad hoc expert group. If all went well, the Special Committee would start its deliberations on the recommendations in the spring of 2001, i.e., almost three years after the recommendations had been formulated.

33. Hungary which participated actively in the reform of peacekeeping operations, believed that the Special Committee should also deal with the issue of assistance to third States on a priority basis. It should first concentrate on recommendations enjoying wide support, and should propose that the Sixth Committee endorse those recommendations. In that way, the General Assembly would give the first set of guidelines to the Secretary-General at the end of 2001, while the Special Committee could continue its deliberations on the remaining proposals. Furthermore, the recommendations should be discussed directly in the Special Committee. Hungary feared that the establishment of a new sub-organ might cause further delays and a repetition of debates, and raise questions concerning the authority of each organ.

34. Adequate funding should be provided to the main judicial organ of the United Nations. While the workload of the International Court of Justice had grown substantially, the Court was still feeling the impact of previous budget cuts. Since the General Assembly would decide on the next biennial budget at its fifty-sixth session, it was time to formalize the request for full funding in the current year.

35. **Mr. Lavalle-Valdés** (Guatemala) said that the report of the Special Committee contained proposals which over the years had become permanent features and on which deadlock seemed destined to persist, because it was unlikely that in the foreseeable future the Special Committee would reach a consensus on their adoption. The proposals were in fact a repetition of others already presented in other forums. For example, the proposal made in chapter III, section B of the Special Committee's report had covered issues already contained in General Assembly resolution 51/242 of 15 September 1997. Those observations also applied to sections C to F of chapter III. Another persistent feature of the Special Committee's proposals was that they were extremely brief and lacking in substance. Nevertheless, they contained some very positive concepts, especially with regard to strengthening the role of the General Assembly. Guatemala would like those proposals to be addressed with the firm purpose of achieving, through compromise, their approval by the Special Committee, so that they could be submitted for adoption by the General Assembly.

36. With respect to assistance to third States affected by sanctions, the sessions of the Special Committee were always held before the Secretary-General circulated his annual report on the item, and therefore the discussion in the Special Committee was simply a continuation of the talks held in the Sixth Committee on the preceding year, and since that additional discussion took place after the adoption of the latest General Assembly resolution on the item, it was of little use.

37. On the subject of peaceful settlement of disputes, which was of particular interest to Guatemala, he was pleased that the proposal submitted by Sierra Leone in 1994 had been modified in 1998 and had become a draft General Assembly resolution which stressed the importance of the peaceful settlement of disputes and reminded States of the wide variety of methods available for achieving that end.

38. With regard to chapter V of the Special Committee's report, his delegation wished to reiterate that it would be necessary to amend the Charter of the United Nations in order to achieve the proposed objective. In conclusion, referring to chapter VII of the report, he commended the Japanese delegation for its proposal aimed at enhancing the efficiency of the Special Committee. Guatemala believed, however, that

if the Special Committee received proposals which could, although at the cost of a great deal of work, lead to positive results, the issue of its working methods would not have to be raised.

39. **Mr. Tarabrin** (Russian Federation), referring to the concept of "strategic stability" formulated by the Russian Minster for Foreign Affairs, Mr. Igor S. Ivanov, said that the main objective of that concept was to ensure the security of States and peoples through cooperation on the basis of the Charter of the United Nations and of the principles and norms of international law. The working paper submitted by the Russian Federation and Belarus to the Special Committee in 1999 to defend the key provisions of the Charter had followed that policy. The work on the paper should be continued in a non-confrontational and purely legal manner.

40. The issue of sanctions should still be a matter of priority. The report of the Secretary-General on the work of the Organization (A/55/1) had underscored the necessity of further improving sanctions regimes in order to increase their effectiveness and flexibility. In that context, at the previous session of the Special Committee, the Russian Federation had introduced the revised working paper entitled "Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation". It believed that sanctions were a very powerful tool for containing and preventing conflicts, but should not become an instrument for punishing States and peoples, or for destabilizing the economic situation in the target country or third States. The elaboration of additional recommendations on the principles of implementation of sanctions would help the Security Council to enhance the legitimacy of its decisions. His delegation was satisfied with the progress achieved by the Special Committee in the article-by-article examination of the paper introduced by the Russian Federation.

41. His Government considered it essential to continue work on the report of the Secretary-General entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions" (A/55/295/Add.1) and fully supported the Special Committee's recommendation in its report that at its fifty-fifth session the General Assembly "should continue to consider, in an appropriate substantive manner and framework, the results of the ad hoc group meeting" (A/55/33, para. 48).

42. The method for calculating damage to third States affected by the implementation of sanctions proposed in the report of the group of experts (A/53/312) was generally acceptable. However, in future deliberations, various questions should be considered in greater detail: for example, how the States indirectly affected by sanctions should be identified, what scale should be used in taking decisions on the extent to which assistance should be provided to those States and whether the level of economic development of third States and their relations with the State targeted by sanctions should be taken into account.

43. Furthermore, without questioning the role of the international financial institutions, it was the principal organs of the United Nations which should be responsible for influencing decisively the formulation of final decisions on the distribution of assistance to third States affected by sanctions. The most efficient method of addressing the issue of sanctions would be to establish a working group within the Sixth Committee.

44. With respect to the important issue of elaborating a legal basis for peacekeeping operations, the Special Committee's agenda included a Russian working paper, "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1), which summarized United Nations expertise in peacekeeping activities and made recommendations for the improvement of those activities. In the light of the many-faceted nature of that issue, the focus should be on formulating legal parameters for peacekeeping operations carried out with the consent of States in the context of Chapter VI of the Charter of the United Nations.

45. As for the Trusteeship Council, the decision whether to give it additional functions or to eliminate it required comprehensive, prudent consideration, taking into account the more general objectives of the reform of the United Nations.

46. His delegation greatly appreciated the Secretary-General's efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*. It was also important to support the activities of the trust fund for voluntary contributions and the special training programme for junior professionals desiring to obtain in-depth knowledge of

the Charter and the practices of the Security Council. He agreed with the Secretary-General that extension of the internship period from two months to four to six months and the use of interns to prepare the repertories would reduce the publication backlog.

47. Lastly, with respect to improvement of the Special Committee's working methods, his delegation was in favour of maintaining the current format and was opposed to the establishment of working groups within other United Nations structures in order to deal with issues falling within the mandate of the Special Committee.

48. **Mr. Gomaa** (Egypt) emphasized that sanctions should be exceptional measures, in accordance with the provisions of Chapter VII of the Charter of the United Nations, and should be resorted to only when all the pacific means mentioned in Chapter VI had been exhausted. The imposition of sanctions should be based on clear, objective criteria and should have specific time limits in order to prevent them from becoming a political instrument in the service of certain members of the Security Council. Article 50 of the Charter provided for a mechanism that the Security Council had not used sufficiently in the past: the holding of consultations with States affected by the adoption of preventive or enforcement measures. He therefore welcomed the report of the Secretary-General on implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/55/295/Add.1) and invited the Security Council to give closer consideration to implementing the provisions of Article 50 of the Charter. In that context, he referred to the note dated 29 January 1999 from the President of the Security Council on that matter. He urged United Nations bodies and the regional and international financial institutions to endeavour to achieve an equitable distribution of the burden of sanctions among all Member States and noted that in 1962, the International Court of Justice had issued an advisory opinion on that matter in relation to the issue of certain expenses of the United Nations. It was also important to bear in mind the opinion expressed by the group of experts which had met in June 1998 in order to establish a possible methodology for evaluating the adverse effects actually experienced by third States as a consequence of the implementation of preventive and enforcement measures.

49. His delegation urged respect for the constitutional balance between the Security Council, which was responsible for imposing sanctions, and other United Nations organs, especially the General Assembly, which, as a transparent, democratic organ, should consider and review sanctions. The Security Council's current monopoly on evaluating the very sanctions that it had imposed was unacceptable.

50. With respect to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, he congratulated the Secretary-General on his efforts to update the former and looked forward to the publication of Supplement 6, Volume 1, in the coming year. Moreover, despite the increase in Security Council activity in recent years, the latter publication included only 70 per cent of what it should; in addition, the number of staff members responsible for its preparation had been reduced, as a consequence of which the updating was proceeding at a slower pace than in the preceding year.

The meeting rose at 11.40 a.m.